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No. 84-1651

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

STATE OF FLORIDA,

Petitioner,

vs.

HENRY MARCY MANEE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FLORIDA SECOND DISTRICT COURT OF APPEAL

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SUMMARY OF ARGUMENT

Petitioner presents a question which this Court has answered in United States v. Ross, 456 U.S. 798 (1982) and has affirmed in Oklahoma v. Castleberry, ___ U.S. ____ (Case No. 83-2126), 53 LW 4450 (April 1, 1985).

Where probable cause to search is limited to a movable container found within an automobile, as contrasted with probable cause to search an automobile generally, this Court has interpreted the Fourth Amendment as requiring a police officer to obtain a search warrant authorizing the opening and searching of the container.

In the case at Bar, probable cause to search focused upon a brown paper bag which the police officer observed Respondent place within his automobile. The Florida Second District Court of Appeal rendered its opinion faithful to the principles of law settled by this Court in Ross, and affirmed in Castleberry.

REASONS FOR OPPOSITION TO WRIT

The Florida Second District Court of Appeal has not decided an important question of Federal law which has not been settled by this Court. It has, in the Manee decision, merely analyzed the facts of the case before it, using the precedents established by this Court. Florida v. Manee, 457 So.2d 530 (Fla. 2d DCA 1984), cert. denied, ___ So.2d ___ (Fla. Case No. 66,210, Feb. 20, 1985).

This Court has clearly delineated between two classes of cases:

(1) If the officer has probable cause to believe there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car, as well as any containers found therein, without the necessity of procuring a search warrant. United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Carroll v. United States, 267 U.S. 132, 45 S.Ct.

280, 69 L.Ed 543 (1925).

(2) If the officer only has probable cause to believe there is contraband in a specific container in the car, he must detain the container and delay his search until a search warrant is obtained. United States v. Ross, supra; Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed2d 235 (1979); United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed2d 538 (1977).

The Florida Second District Court of Appeal has ruled that the Sanders and Chadwick class of cases control the following facts in the case at Bar:

> Detective Reed established a surveillance of the parking lot, beginning on June 14, 1983. He watched Respondent for two days and observed nothing suspicious. On both days, however, Respondent left the plant in his automobile for about one-half (½) hour during his lunch period. On June 16, 1983, at about noon, Detective Reed followed Respondent in his automobile to a building known as Martin Manufacturing.

Approximately six minutes after Respondent went inside the building, an unidentified man came out briefly and looked up and down the street in what Reed described as a "suspicious manner." About six minutes later, Respondent came out of the building carrying a paper bag, immediately followed by the same unidentified man. As Respondent left in his automobile, the man, once again, looked up and down the street before returning inside. . . . Predicated upon Respondent's actions and the appearance of the bag, Detective Reed believed that the bag contained marijuana.

When Respondent returned to ABA Industries, he left the bag in his automobile and went back to work. Detective Reed continued to maintain surveillance because he anticipated that a narcotics transaction was likely to ensue. However, nothing occurred. Respondent left work at 5:00 P. M., entered his car, and drove out of the parking lot. At this point Detective Reed stopped the automobile and removed Respondent from the car. . . . Without obtaining Respondent's consent to search, Detective Reed entered the car and located the bag in a compartment. State of Florida v. Manee, 457 So.2d 530 (Fla. 2d DCA 1984). (JA 3-6).

Support for Petitioner's assertion that

the Florida Second District Court of Appeal decided a substantial and unsettled Federal question arising under the Constitution is not apparent from a reading of United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed2d 572 (1982). In discussing its Opinion in Sanders, supra, this Court, in Ross, stated:

> The Arkansas Supreme Court ruled that the warrantless search of the suitcase was impermissible under the Fourth Amendment and this Court affirmed. As in Chadwick, the mere fact that the suitcase had been placed in the trunk of the vehicle did not render the automobile exception of Carroll applicable; . . . As the Chief Justice noted in his Opinion concurring in the Judgment:
>
> > "Because the police officers had probable cause to believe that Respondent's green suitcase contained marihuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under United

> States v. Chadwick, 433 U.S. 1, 53 L.Ed2d 538, 97 S.Ct. 2476 (1977). . .
>
> ". . . Here, as in Chadwick, it was the luggage being transported by Respondent at the time of the arrest, not the automobile in which it was carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in Chadwick. The fact that the suitcase was resting in the trunk of the automobile at the time of Respondent's arrest does not turn this into an automobile exception case. The Court need say no more." 442 U.S., at 766-767, 61 L.Ed2d 235, 99 S.Ct. 2586.

This distinction between the class of case where there is probable cause to search the entire automobile, as opposed to the class of case where there is probable cause to search only a movable container found within an automobile, is clearly drawn in

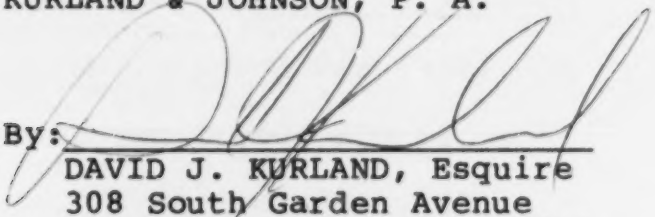
Ross, and has been recently affirmed by this Court in Oklahoma v. Castleberry, ___ U.S. ____, (Case No. 83-2126), 53 LW 4450 (April 1, 1985). Neither has this distinction gone unrecognized by the Florida Courts of Appeal that have followed the teachings of Ross, in Mancini v. State, 448 So.2d 573 (Fla. 1st DCA 1984) and State v. Manee, 457 So.2d 530 (Fla. 2d DCA 1984), cert. denied, ___ So.2d ___ (Fla. Case No. 66,210, Feb. 20, 1985).

CONCLUSION

Certiorari should be denied and the decision of the Second District Court of Appeal affirmed.

Respectfully submitted,

KURLAND & JOHNSON, P. A.



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CERTIFICATE OF SERVICE

I, DAVID J. KURLAND, Counsel for the Respondent, and a member of the Bar of the United States Supreme Court, hereby certify that on the 7th day of May, 1985, I served three copies of the Brief in Opposition to Petition for Writ of Certiorari upon DAVIS G. ANDERSON, JR., Esq., and FRANK J. MIGLIORE, JR., Esq., Assistant Attorneys General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602, by a duly addressed envelope with postage prepaid.

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